



SMALL BUSINESS ECONOMIC IMPACT ANALYSIS

For Proposed Rule Changes to

Chapter 173-160 WAC—Minimum Standards for Construction and Maintenance of Wells

Chapter 173-162 WAC – Rules and Regulations Governing the Regulation and Licensing of Well Contractors and Operators

August 2006

Washington State Department of Ecology

Publication Number: 06-11-020



Original printed on recycled paper

EXECUTIVE SUMMARY

When proposing a new administrative rule for consideration, the Washington State Department of Ecology (Ecology) is required by RCW 19.85.030 to determine whether the rule will impose a disproportionate impact on small business. This document fulfills this requirement for the proposed amendments of Chapter 173-160 WAC, Minimum Standards for Construction and Maintenance of Wells and Chapter 173-162 WAC, Rules and Regulations Governing the Regulation and Licensing of Well Contractors and Operators.

The proposed rule amendments can be expected to affect well contractors and operators, landowners, and commerce. This small business economic impact analysis quantifies the rules impacts on both small and large businesses, and concludes that there is a disproportionate impact on small businesses. Compliance with these rules is not expected to lose sales or revenue for businesses.

Small Business Economic Impact Analysis

For Proposed Rule Changes to

Chapter 173-160 WAC—Minimum Standards for Construction and Maintenance of Wells
Chapter 173-162 WAC – Rules and Regulations Governing the Regulation and Licensing
of Well Contractors and Operators

1. BACKGROUND

The purpose of the rule proposal is to amend two existing regulations pertaining to well construction standards and professional licensing of well drillers. The standards for well construction (Chapter 173-160 WAC) identify specific construction requirements that all wells must meet in order to protect public health, safety, and welfare as well as to protect the ground water resource. The licensing rule (Chapter 173-162 WAC) provides for the administration of the licensing of Washington State well drillers.

The changes to the standards for well construction and driller licensing are required by legislative mandate (Chapter 18.104 RCW). The proposed rule changes are to maintain consistency with the drilling statute and to remain current with changes in drilling industry and technology advances. Most amendments to the rules were driven by driller request and the need to clarify the existing rules.

Changes to the “standards for well construction” involve changes to the definition section; expansion of some of the technical areas; statutory changes in drilling fees; and improvement to the organization of certain sections. With the exception of licensing fees, changes to the licensing regulations are all required by statute. They include the development of rules to conduct an annual review of those counties that have delegated authority to inspect wells; development of a retirement license; and clarification and improvement to the current continuing education program. Ecology is also proposing a raise in licensing renewal fees from \$20 every two years to \$75 every two years. New applications for licenses will increase from \$25 to \$75.

The proposed rule amendments include:

1. Clarifying operator standards and well drilling rule language to make Chapter 173-160 WAC consistent with operating standards of the industry and definitions consistent with industry terminology;

2. Revising the standards for construction and maintenance of wells to make Chapter 173-160 WAC consistent with legislative mandates for fees and services; and
3. Resetting the application fees for the regulation and licensing of well contractors and operators.

As required by RCW 19.85.030, Ecology is developing and issuing this Small Business Economic Impact Statement (SBEIS) as part of this rule adoption process. The objective of this SBEIS is to identify and evaluate the various requirements and costs that the proposed rule amendments might impose on business. In particular, the SBEIS examines whether the costs on business that might be imposed by the proposed rule amendments impose a disproportionate impact on the State's small businesses. This is consistent with the legislative purpose of the Regulatory Fairness Act (RCW 19.85) and is set out in RCW 19.85.011:

“The legislature finds that administrative rules adopted by state agencies can have a disproportionate impact on the state’s small businesses because of the size of those businesses. This disproportionate impact reduces competition, innovation, employment and new employment opportunities, and threatens the very existence of some small businesses.”

The specific purpose and required contents of the SBEIS is contained in RCW 19.85.040.

(1) A small business economic impact statement must include a brief description of the reporting, record keeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements. It shall analyze the costs of compliance for businesses required to comply with the proposed rule adopted pursuant to RCW 34.05.320, including costs of equipment, supplies, labor, and increased administrative costs. It shall consider, based on input received, whether compliance with the rule will cause businesses to lose sales or revenue. To determine whether the proposed rule will have a disproportionate impact on small businesses, the impact statement must compare the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs:

- (a) Cost per employee;*
- (b) Cost per hour of labor; or*
- (c) Cost per one hundred dollars of sales.*

(2) A small business economic impact statement must also include:

- (a) A statement of the steps taken by the agency to reduce the costs of the rule on small businesses as required by RCW 19.85.030(3), or reasonable justification for not*

- doing so, addressing the options listed in RCW 19.85.030(3);*
- (b) A description of how the agency will involve small businesses in the development of the rule; and*
- (c) A list of industries that will be required to comply with the rule. However, this subsection (2)(c) shall not be construed to preclude application of the rule to any business or industry to which it would otherwise apply.*

For purposes of an SBEIS, the terms “small business,” and “industry” are defined by RCW 19.85.020. “Small business” means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees. “Industry” means all of the businesses in this state in any one four-digit standard industrial classification as published by the United States Department of Commerce.

The proposed water well drilling rule amendments developed by Ecology as part of this rulemaking process will be evaluated in the following sections of this document. Specifically, the following sections contain the information required by the Regulatory Fairness Act—RCW 19.85.

2. ANALYSIS OF COMPLIANCE COSTS FOR WASHINGTON BUSINESSES

The SBEIS is intended to analyze the difference between the situation “without the proposed rule amendments” and the expected situation “with the proposed rule amendments”. In order to accomplish this comparison, a baseline scenario, which describes the current situation, must be defined. The baseline used in this analysis is the current situation under state regulations.

In the proposed rule amendments, some changes originated from legislative mandates, some are clarifications of the existing rule with no real change, and some simply redefine or include new industry terminology. These amendments make no real change from the baseline and will not have cost impacts on those required to comply. These clarifying changes are not analyzed in this SBEIS. This analysis will analyze the changes from the baseline that would result in additional costs. The primary costs include the new requirements for the operation and maintenance of wells, and the fee application structure for well contractors and operators. Compliance with these rules is not expected to lose sales or revenue for businesses.

2.0 Costs to construction and maintenance of wells

WAC 173-160-191(16). Design and Construction Requirements for Completing Wells.

For wells completed in an unconsolidated formation in which the bore hole extends beyond the casing or screen, the driller must backfill that portion of the bore hole that extends more than 10 feet beyond the casing or screen. The backfill shall consist of either bentonite or chlorinated sand or pea gravel. If any portion of the bore hole extension penetrates a clay layer which is greater than 6 feet in thickness, that portion of the bore hole shall be sealed with bentonite. Although there may be some minor costs, compared to previous rule language, there is no way for Ecology to determine how many wells this could affect as it has always been common practice to drill past the end of the casing in search of additional flow. This is currently a standard practice in the industry and will not be analyzed from old rule language.

WAC 173-160-381(2) and WAC 173-160-381(4). Standards for Decommissioning a Well. Defining the correct procedure for decommissioning and sealing wells will have additional costs. Ecology estimates 200 to 300 wells annually will need to be decommissioned in Washington State. The well program estimates costs of decommissioning a well by backfilling instead of perforating at \$2,000 per well¹. A lower range of 150 to 250 wells could be decommissioned under the new guidelines. Cost estimates to landowners would be \$300,000 to \$500,000 annually.

2.1 Costs of licensing for well contractors and operators

WAC 173-162-060. Licensing Fees.

Application fees will be increased from \$25 to \$75 for each category of license (water and resource protection) and renewals will increase from \$20 to \$75. Well licenses are good for two years. The primary costs associated with this rule amendment are the increase in fees for licensing of well contractors and operators. Two additional licenses are proposed. The “Inactive” license and the “Retirement” license will also have a \$75 application fee.

License	Old Fee	Proposed Fee	Estimated Annual # licenses	Estimated NET Costs
Water Well Operator (Training)	\$25	\$75	30	\$1,500
Water Well Operator (New)	\$25	\$75	30	\$1,500
Water Well Operator (Renewal)	\$20	\$75	240	\$13,200
Resource Protection Well Operator (Training)	\$25	\$75	30	\$1,500
Resource Protection Well Operator (New)	\$25	\$75	30	\$1,500
Resource Protection Well Operator (Renewal)	\$20	\$75	200	\$11,000
Conditional			1	

¹ Dick Szymarek, Well Drilling lead Dept. of Ecology.

Inactive		\$75	2	\$150
Retirement		\$75	2	N/A ²
TOTAL 2 YEAR NET COSTS				\$30,350
TOTAL ANNUAL NET COSTS				\$15,175

WAC 173-162-085. Continuing education.

Under the proposed rule the Department of Ecology will no longer be a continuing education provider. An estimated 560 well drillers annually received their necessary Continuing Education Units (CEUs) from Ecology at a rate of \$25 per the required 7 CEUs. Continuing education will now be available from other providers. One of the primary provider's costs ranges from \$75 to \$125 for the annual CEU credits. An estimated \$28,000 to \$56,000 additional continuing education expenses would be shifted to well drillers of Washington State.

2.2 Other impacts to Standards for construction and maintenance of wells

There will be other impacts as a result of this rulemaking to Chapter 173-160 WAC. Under WAC 173-160-040(2), drillers working in counties with delegated authority to inspect wells will be required to check with the county environmental health section for inspection requirements. They will be required to obey all county notification and reporting requirements. This will have a minor impact on drillers that is below the threshold for quantification.

WAC 173-160-171(3)(b)(vi) states that wells shall not be located within certain minimum distances from known or potential sources of contamination including within 1,000 feet from the boundary of a permitted or previously permitted solid waste landfill as defined by the permit or 1,000 feet from the property boundary of other solid waste landfills, except Ecology may grant a variance under certain circumstances. This will have a minor impact on drillers who may not be able to avoid the setback distance and are forced to ask for a variance. The number of these occurrences cannot be determined.

2.3 Other impacts to the regulation and licensing of well contractors and operators

There will be other impacts as a result of this rulemaking to Chapter 173-162 WAC. Under WAC 173-162-085, drillers are required to obtain 14 CEUs every two years to maintain their drilling licenses. Ecology will no longer be a provider of CEUs, therefore, drillers

² Not analyzed. Not required, gives no well drilling privileges.

will have to obtain them from other sources³. The cost to the drillers for this can not be determined.

Under WAC 173-162-095(3)(b), drillers will need to notify Ecology at least 24 hours prior to their scheduled exam date if they cannot meet that date. If they fail to reschedule their exam within 30 days of the initial exam date, they will forfeit their application and fee. This will have an impact on those drillers that do not meet this requirement. It is unknown how many drillers will fall into this category. Ecology assumes all applicants will reschedule within 30 days.

3. QUANTIFICATION OF COSTS AND RATIOS

The largest cost generated by the proposed rule amendments is the cost of the well decommissioning, well driller licensing fees, and continuing education, although there may be some other minor costs.

In this SBEIS, the names of businesses are taken from Employment Security's database for SIC code 1780 (water well drilling), and then are matched to this database to find out the corresponding employee numbers and number of firms. For an average small business that drills wells, its average number of employees is 2.6. For an average top ten percent business that has an employed well driller, its average number of employees is 29.5. Total cost to all drillers ranges from \$343,000 to \$571,000. There are 223 active firms in the Employment security database giving total cost between \$1,538 and \$2,561 per firm.

The cost per employee ratio for small business is from \$591 to \$985 per employee, and is from \$52 to \$87 per employee for the top ten percent of the largest businesses. These numbers demonstrate that the proposed rule amendments have a disproportionate impact on small business⁴.

4. ACTIONS TAKEN TO REDUCE THE IMPACT OF THE RULE ON SMALL BUSINESS

This SBEIS concludes that the proposed rule amendments will disproportionately impact small business. It is not expected that any business will lose sales or revenue. RCW 19.85.030 (2) requires:

³ Washington State Groundwater Association, etc.

⁴ Cost calculations do not separate costs passed on to consumers. All costs of the rule are assumed to the business.

Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by the rule on small businesses.

(a) Reducing, modifying, or eliminating substantive regulatory requirements;

Ecology has deleted or modified certain sections of WAC 173-160 and WAC 173-162 which will offset the burden to small businesses. Sections deleted include WAC 173-160-201(9) and WAC 173-162-050(2)(a)(ii).

(b) Simplifying, reducing, or eliminating record keeping and reporting requirements;

Ecology has not offset the record keeping and reporting requirements. Small businesses currently have all record keeping and reporting processes in place. There is no mitigation of these at this time.

(c) Reducing the frequency of inspections;

Ecology has not offset the frequency of inspections for small businesses. The Well Drillers Association, an organization on the Technical Advisory Committee (TAG) that assisted Ecology in this rulemaking, wanted inspections to be increased.

(d) Delaying compliance timetables;

Ecology has not offset delaying compliance timetables. The Well Drillers Association as members of the TAG wanted inspections to be increased and therefore, timetables will not be delayed to satisfy their request.

(e) Reducing or modifying fine schedules for noncompliance;

Ecology has not offset reducing or modifying fine schedules for noncompliance. Fines are set by statute in RCW 18.104 and cannot be reduced or mitigated through rule.

(f) Any other mitigation techniques.

Ecology did not include any other mitigation techniques.

5. THE INVOLVEMENT OF SMALL BUSINESS IN THE DEVELOPMENT OF THE PROPOSED RULE AMENDMENTS

As mandated by statute, the program has utilized the TAG which was established by the 1993 legislature to assist in the development of these rules. This group consists of six licensed drillers, two health staff, two Ecology staff, one engineer, and one hydrogeologist. The TAG is chaired by Ecology. This group started their work in 2002. Since then, a series of continuing education workshops have been conducted to get driller input on potential rule changes. Further involvement included public workshops and mailings.

6. THE SIC CODES OF IMPACTED INDUSTRIES

Ecology concludes that the businesses associated with the SIC code 1780 and 1781 will be impacted from the proposed rule amendments.